

**REMARKS****Claim Amendments**

Applicants presently cancel system claims 9-16 and computer program product claims 17-24, leaving only method claims in the present application. In amending the claims in the present application, Applicants do not concede that the claims as originally filed were not in a condition for allowance nor do these cancellations represent a disclaimer of the recited subject matter. Rather, Applicants will pursue these cancelled system and product claims in one or more continuation applications. Applicants believe themselves entitled to pursue these claims in additional applications because the system and product claims are directed to an invention in a different statutory category than are the method claims that remain in this application. Applicants believe they are entitled to have claims directed to inventions in separate statutory categories issued in separate patents.

Applicants additionally amend claim 1 in the present application. Claim 1 is presently amended to include all limitations previously found in dependent claims 2-8. As such, Applicants have cancelled claims 2-8 in the present application. Applicants also amend claim 1 in the present application to include the limitation "identifying a user metric and deleting the user metric identified in the editing instruction." Support for this amendment is found in Applicants' original specification at page 52, lines 12-26. In addition, Applicants amend claim 1 in the present application to include the limitation "wherein a user metric pattern is comprised of a plurality of predetermined generic metrics not created specifically for the user and determined to comprise a metric pattern representing a metric state common to many users." Support for this amendment is found in Applicants' original specification at page 28, lines 12-17. Furthermore, Applicants amend claim 1 of the present application to include the limitation "wherein the action is designed to administer devices to affect the user metric state defined by the metric pattern." Support for this amendment is found in Applicants' original specification at page 29, lines 17-22. Applicants submit that the amendments do not introduce any new matter into the specification and submit that the claims are in condition for allowance.

**Claim Rejections – 35 U.S.C. § 103**

The Office Action rejects claims 1-24 in the present application as being unpatentable over Brown (U.S. Publication No. 2003/0229514) (hereafter, 'Brown') in view of Rao, *et al.* (U.S. Patent No. 7,181,375) (hereafter, 'Rao'). As noted above, Applicants have cancelled claims 2-24 in this Response. The question of whether Applicants' remaining claim is obvious or not is examined in light of: (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, including commercial success, long felt but unsolved needs, and failure of others. *KSR Int'l Co. v. Teleflex Inc.*, No. 04-1350, slip op. at 2 (U.S. April 30, 2007). Although Applicants recognize that such an inquiry is an expansive and flexible one, the Office Action must nevertheless demonstrate a prima facie case of obviousness to reject Applicants' claim for obviousness under 35 U.S.C. § 103(a). *In re Khan*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). To establish a prima facie case of obviousness, the proposed combination of the references must teach or suggest all of Applicants' claim limitations. *Manual of Patent Examining Procedure* § 2142 (citing *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974)). As shown below in more detail, the proposed combination of Brown and Rao cannot establish a prima facie case of obviousness because the proposed combination of Brown and Rao does not teach or suggest each and every element of claim 1 of the present application. The rejection of claim 1 should therefore be withdrawn and the claim should be allowed. Applicants respectfully traverse the rejection and request reconsideration of claim 1.

**The Proposed Combination Of Brown And Rao  
Does Not Teach Or Suggest Each And Every  
Element Of Claim 1 Of The Present Application**

Independent claim 1 of the present application recites:

1. A method for creating a user metric pattern, the method comprising:

receiving, within a network, a plurality of disparate user metrics from a metric sensor worn by the user;

saving the plurality of disparate user metrics;

editing the subset of the saved disparate user metrics including receiving an editing instruction from a user identifying a user metric and deleting the user metric identified in the editing instruction;

identifying a subset of the saved disparate user metrics that comprise a user metric pattern comprising mining the saved disparate user metrics;

storing the subset of the saved disparate user metrics as a user metric pattern, further comprising:

creating a metric list; and

associating the metric list with a user metric pattern data structure;

associating an action with the metric pattern comprising retrieving an action ID from an action database, wherein the action is designed to administer devices to affect the user metric state defined by the metric pattern.

**The Proposed Combination Of Brown And Rao Does  
Not Teach Or Suggest Each And Every Element Of Claim 1  
In The Present Application**

Amended claim 1 recites a method for creating a user metric pattern. The first element of amended claim 1 now recites limitations previously found in dependent claims 2-8 in Applicants' original application, as well as limitations previously found in Applicants' original specification. The Office Action takes the position that the combination of Brown and Rao teaches or suggests the limitations previously found in dependent claims 2-8 of Applicants' original application. The proposed combination of Brown and Rao, however, does not teach or suggest claim 1 of the present application, as amended in this Response.

Amended claim 1 recites a method of creating a user metric pattern. Claim 1 is amended to include limitations previously found in Applicants' original specification, including "identifying a user metric and deleting the user metric identified in the editing instruction," "wherein a user metric pattern is comprised of a plurality of predetermined generic metrics not created specifically for the user and determined to comprise a metric pattern representing a metric state common to many users," and "wherein the action is designed to administer devices to affect the user metric state defined by the metric pattern." The combination of Brown and Rao neither teaches nor suggests any of these limitations.

Brown generally discloses a networked system for identifying an individual, communicating information to the individual, and remotely monitoring the individual. Brown does not teach or suggest, however, deleting the user metric identified in the editing instruction, a user metric pattern comprised of a plurality of predetermined generic metrics, or an action designed to administer devices to affect the user metric state defined by the metric pattern as claimed in amended claim 1 of the present application. In fact, Brown does not even mention a user metric pattern as claimed in the present application at any point in Brown's disclosure.

In addition to the fact that Brown does not teach or suggest the limitations of amended claim 1 in the present application, Rao also does not teach or suggest the limitations of amended claim 1 in the present application. Rao generally discloses a method and system for determining patient states. Rao does not teach or suggest, however, deleting the user metric identified in the editing instruction, a user metric pattern comprised of a plurality of predetermined generic metrics, or an action designed to administer devices to affect the user metric state defined by the metric pattern as claimed in amended claim 1 of the present application. In fact, Rao does not even mention a user metric pattern as claimed in the present application at any point in Rao's disclosure. Because the cited combination of Brown and Rao does not teach or suggest each and every element and limitation of Applicants' claim, the combination of Brown and Rao does not render Applicants' claim obvious within the meaning of 35 U.S.C. § 103. The rejections under 35 U.S.C. § 103 should therefore be withdrawn.

### **Conclusion**

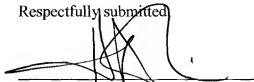
Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Brown in view of Rao. The combination of Brown and Rao does not teach or suggest each and every element of Applicants' claim. Claim 1 is therefore patentable and should be allowed. Applicants respectfully request reconsideration of claim 1.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

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By:

Respectfully submitted



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